

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ADAM TIMMERMAN dba AT
LIVESTOCK ENT**

Facility #63247
Section 27, Pilot Township
Cherokee County, Iowa

ADMINISTRATIVE ORDER
NO. 2011-AFO- 20

TO: Adam Timmerman
1635 585th Street
Cherokee, Iowa 51012-7295

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Cindy Martens, Field Office 3
Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51031-2200
Phone: 712/262-4177

Relating to appeal rights:

Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Penalty of payment to:

Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Adam Timmerman owns and operates AT Livestock Ent, a 960 animal unit confinement facility. The facility is located at 1670 580th Street, Cherokee, Iowa (Section 27, Pilot Township, Cherokee County, Iowa). Mr. Timmerman filed the original MMP for the facility in August 2004. The annual MMP update deadline was established as November 1 of each calendar year. The original Iowa Phosphorus Index was due November 1, 2006. The original Iowa Phosphorus Index was submitted in January 2007. The next update to the Iowa Phosphorus Index was due November 1, 2010.
2. Mr. Timmerman failed to submit the MMP update with the Iowa Phosphorus Index by November 1, 2010. On November 15, 2010, DNR Field Office 3 issued a Notice of Violation letter to Mr. Timmerman for failing to timely submit a complete MMP update and pay fees for 2010. The letter provided Mr. Timmerman until December 1, 2010 to submit the required information in order to avoid a monetary penalty.
3. On November 30, 2010, Mr. Timmerman contacted DNR Field Office 3 and asked which site's MMP was due. DNR Field Office 3 told him that the MMP for the facility located at 1670 580th Street was due and that it needed an Iowa Phosphorus Index with the MMP submittal. Mr. Timmerman stated he would send the MMP update and fees and that the Iowa Phosphorus Index would be submitted later. On December 1, 2010, DNR Field Office 3 received the MMP update and fees from Mr. Timmerman.
4. On December 3, 2010, DNR Field Office 3 sent a letter to Mr. Timmerman indicating the MMP submittal was incomplete. The Iowa Phosphorus Index was not submitted. The letter stated the additional information must be submitted within ten days in order to avoid a monetary penalty. On January 7, 2011, DNR Field Office 3 left a message with Mr. Timmerman stating that he had until January 14, 2011 to submit the Iowa Phosphorus Index.
5. On January 20, 2011, DNR Field Office 3 issued a Notice of Referral to Mr. Timmerman. The letter informed Mr. Timmerman that the failure to submit a complete MMP update with an Iowa Phosphorus Index was being referred for further enforcement.
6. On February 25, 2011, Mr. Timmerman submitted an Iowa Phosphorus Index to DNR Field Office 3.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to submit a complete updated MMP on an annual basis to the DNR. 567 IAC 65.17(17)"d" states that the phosphorus index is valid if the soil phosphorus concentration data is less than four years old. Mr. Timmerman submitted an Iowa Phosphorus Index with the 2006 MMP update; therefore in order for the 2010 MMP update to be considered complete it should have included an Iowa Phosphorus Index. The 2010 MMP update was due November 1, 2010. A complete MMP update with an Iowa Phosphorus Index was not submitted until February 25, 2011. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Timmerman to do the following:

1. Pay an administrative penalty in the amount of \$2,500.00 within 60 days within 60 days of receipt of this Order, subject to appeal rights stated in Section VII.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of this Order with an administrative penalty of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Timmerman's failure to timely submit a complete MMP update with an Iowa Phosphorus Index allowed him to save time and money. He has gained an economic benefit from the delay in the submittal. \$100.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations

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administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update and Iowa Phosphorus Index are crucial aspects of the DNR's animal feeding operation program. The MMP update and Iowa Phosphorus Index ensure that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. Mr. Timmerman's facility has a capacity of 960 animal units and environmental harm is likely to occur if the manure is not applied properly. DNR Field Office 3 has expended labor and expenses in informing Mr. Timmerman of the requirements. Therefore, \$1,400.00 is assessed for this factor.


Culpability – Mr. Timmerman has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. DNR Field Office 3 sent Mr. Timmerman notices of the need for the Iowa Phosphorus Index. Therefore, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 12th day of
August, 2011.

Facility #63247; Kelli Book, DNR Field Office 3, EPA, Gene Tinker, VIII.C.2